

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR08-996

MICHAEL ANTHONY BROWN
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered APRIL 8, 2009

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. CR07-2616]

HONORABLE CHRIS PIAZZA,
JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

A Pulaski County jury found Michael Brown guilty of video voyeurism and sentenced him to a six-year term in the Arkansas Department of Correction. Brown's sole argument is that the State failed to prove that he set up the video camera in question. We affirm.

The State alleged that Brown secretly videotaped his stepdaughter, T.G., on various occasions while she was getting ready for school in the morning. Most of the State's case consisted of testimony from T.G. and her mother/Brown's wife, Gloria. On May 9, 2007, Gloria was at home alone doing housework when she opened Brown's dresser drawer to put away his clothes. She discovered an unmarked VHS tape, which she never recalled seeing before. Out of curiosity, she played the tape. On the tape was T.G. dressing herself in the bathroom. The bathroom was from the house where the family resided a year prior. T.G. appeared to be fifteen or sixteen in the video; she was twenty years old at the time of trial.

After viewing the tape, Gloria called another one of her daughters, who found T.G. and brought her home to see the video. After the three of them viewed the video, they went to the prosecuting attorney's office to press charges. When they returned home, they saw Brown and a police officer. Brown was removing his belongings from the home. Brown called Gloria into the home and told her, "You got my stuff out of my drawer." The State also introduced telephone messages from Brown. In one of those messages, he again told Gloria that she took something out of his drawer. Gloria and T.G. also testified that Brown owned a small video camera and that Brown would often ask to use the bathroom before T.G. in the morning. Neither Gloria nor T.G. thought anything of it at the time, as T.G. was a teenage girl and would often spend one to two hours in the bathroom each morning. On cross-examination, Gloria admitted that she had a boyfriend named Phil Bush, who would often spend the night with her at her previous residence. The two broke up in December 2003. However, Bush never visited her at her current residence, and he did not have a dresser drawer there.

At the close of the State's case, Brown moved for directed verdict, contending that the State did not present substantial evidence that he was the one who videotaped T.G.. The court denied his motion. Brown renewed the motion at the conclusion of his own case, and the motion was denied a second time. After deliberations, the jury found Brown guilty of video voyeurism and sentenced him to a six-year term in the Arkansas Department of Correction.

For his sole point on appeal, Brown challenges the sufficiency of the evidence to

support the conviction. He does not contest the evidence that someone videotaped T.G. without her permission while she had a reasonable expectation of privacy.¹ However, he contends that the State failed to prove the identity of the perpetrator.

When a defendant makes a challenge to the sufficiency of the evidence on appeal, we view the evidence in the light most favorable to the State. *Baughman v. State*, 353 Ark. 1, 110 S.W.3d 740 (2003). The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence. *Id.* Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.* Only evidence supporting the verdict will be considered. *Hicks v. State*, 327 Ark. 652, 941 S.W.2d 387 (1997). Circumstantial evidence provides the basis to support a conviction if it is consistent with the defendant's guilt and inconsistent with any other reasonable conclusion. *Von Holt v. State*, 85 Ark. App. 308, 151 S.W.3d 1 (2004). Whether the evidence does so is a question for the trier of fact. *Id.* It is essential to every case that the accused be shown as the one who committed the crime; however, that connection can be inferred from all the facts and circumstances of the case. *Williams v. State*, 308 Ark. 620, 825 S.W.2d 826 (1992).

The State presented substantial evidence that Brown was the person who videotaped T.G.. It showed that Brown owned a camera capable of secretly videotaping a person, that Brown often asked to go into the bathroom immediately before T.G., and that the videotape

¹A person commits Class D felony video voyeurism if he uses a camera to secretly videotape a person present in a residence if that person (1) is in an a private area out of public view, (2) has a reasonable expectation of privacy, and (3) has not consented to the observation. *See* Ark. Code Ann. § 5-16-101(a) (Supp. 2007).

was found with Brown's belongings. Further, Brown made statements indicating that his belongings were removed from his drawer after the tape was found, thus linking him to the tape. Though Brown presented evidence that another person visited the residence around the time T.G. was videotaped, a reasonable jury could conclude that the State presented evidence consistent with Brown's guilt and inconsistent with any other reasonable conclusion.

Affirmed.

VAUGHT, C.J., and HART, J., agree.